

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CONNECTICUT BANK OF)	
COMMERCE)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-762 SLR
)	
THE REPUBLIC OF CONGO)	
)	
Defendant,)	
)	
CMS NOMEKO CONGO, INC.,)	
)	
Garnishee.)	

**PLAINTIFF’S MOTION FOR EXTENSION OF TIME
TO SUBMIT REBUTTAL EXPERT REPORT**

Plaintiff, Af-Cap, Inc. (“Af-Cap”) as assignee of Connecticut Bank of Commerce, moves this Court, pursuant to Rule 6 of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) and Local Rule 16.5 , for an order granting Af-Cap a brief extension of time to submit its rebuttal to the proposed expert report of defendant CMS Nomeco, Inc.’ (“CMS” or “Garnishee”). In support of its requested relief, Af-Cap shows as follows:

1. On or about December 13, 2006, CMS submitted a letter from David Kaeuper, the former United States Ambassador to the Republic of Congo, concerning Mr. Kaeuper’s proposed expert testimony in connection with (i) the response of the Congolese government to a United States court order, (ii) the reasonableness of CMS's dealings with the Congolese government concerning United States court orders, and (iii) how the Congolese government would respond to a United States court order garnishing the oil royalty obligation at issue in this case.

2. As a result of the questionable statements/opinions expressed in Mr. Kaeuper's letter, Af-Cap retained Ralph Gustav Steinhardt, Esquire, the Arthur Selwyn Miller Professor of Law at The George Washington University School of Law, as its expert rebuttal witness.

3. Professor Steinhardt is recognized as an expert in the field of International Law who regularly lectures on international business transactions, international civil litigation, and international legal theory. A copy of Professor's Steinhardt's curriculum vitae is attached as **Exhibit A** hereto.

4. Professor Steinhardt was out of the country to attend an International Jurists Conference in Geneva, Switzerland from Tuesday, January 9, 2007 until Monday, January 15, 2007. As a result of his professional commitments, Professor Steinhardt has been unable to finalize his expert rebuttal report by the deadline established by the Court's Scheduling Order, Tuesday, January 16, 2007.¹

5. On Friday, January 12, 2007, after it became apparent that Professor Steinhardt's report would not be finalized prior to the rebuttal deadline, Af-Cap contacted CMS to seek an extension of the expert rebuttal deadline.

6. On January 15, 2006, a court holiday CMS/Garnishee refused Af-Cap's request for an extension. Within hours of receiving CMS/Garnishee's response, and after having the opportunity to confer with Professor Steinhardt and more definitively gauge the time needed for Professor Steinhardt to finalize his report, Af-Cap again requested a

¹ The Scheduling Order set the due date for January 15, 2007, which is the Martin Luther King Jr. holiday. Under Rule 6, Fed. R. Civ. P., Af-Cap's rebuttal report would have been due on January 16, 2007. Af-Cap, therefore, brings this motion on the due date for the report because it was trying to work out the extension with CMS.

short extension of five (5) business days from CMS. CMS again denied Af-Cap's request.

7. Given CMS' staunch refusal to grant a short extension to Af-Cap, Af-Cap files the instant motion seeking the Court's permission for a short extension of time to file its rebuttal report. *See e.g. Chimie v. PPG Indus.*, No. Civ.A. 01-389(KAJ), 2004 WL 3393000 at *1, n.2 (D. Del. Jan. 16, 2004) (denying plaintiffs request to submit supplemental testing data on the eve of trial when it failed to request an extension of time to file its expert reports); *see also Apartment Communities, Corp. v. Insurance Mgt. Assocs.*, No. 97-177-SLR, 1998 WL 661456 at *9, n.8 (D. Del. Sept. 15, 1998) (noting that submitting expert report after the deadline without seeking an extension of time results in barring the proposed expert testimony).

8. Good and sufficient cause exists for the granting of a brief extension, as:

- Professor Steinhardt was unable to finalize the expert rebuttal report due to commitments and travel overseas;
- The proposed extension of five business days causes no prejudice to CMS, and does not affect the just and speedy resolution of this case;
- The expert rebuttal report will be filed within the discovery period;
- CMS/Garnishee has yet to produce its proposed expert for deposition, resulting in a delay in Professor Steinhardt completing his report. Indeed, Af-Cap reserves the right to supplement its expert rebuttal report.;
- Af-Cap's requested extension has no substantive affect on scheduling; and
- Professor Steinhardt will be available for deposition after the discovery period closes.

9. Accordingly, Af-Cap believes good cause and sufficient cause exists for the requested short extension of time.

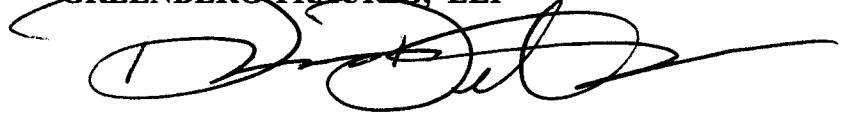
Conclusion

WHEREFORE, Af-Cap respectfully requests the Court extend the date by which Af-Cap must submit its expert rebuttal report to on or before Monday, January 22, 2007, and the Court grant Af-Cap any and all further relief as is just and appropriate.

Dated: January 16, 2007

Respectfully submitted,

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of Commerce, *et. al.***

CERTIFICATION OF COUNSEL

Under Local Rule 16.5, I hereby certify that Af-Cap has retained Professor Ralph G. Steinhardt, Esq., who is preparing the above-referenced rebuttal report.

A handwritten signature in black ink, appearing to read 'D. Detweiler', written over a horizontal line.

Donald J. Detweiler

CERTIFICATE OF CONFERENCE

Under Local Rule 7.1.1, I hereby certify that Af-Cap has conferred with counsel for CMS who opposes the relief sought in this Motion.

A handwritten signature in black ink, appearing to read 'D. Detweiler', written over a horizontal line.

Donald J. Detweiler